Office-Supreme Court, U.S.
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AUG 31 1981
ALEXANDER L. STEVAS,

NO.80-2166

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1980

MARY TABEROFF,

Petitioner,

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Intervenor Respondent

v.

FARMERS GROUP, INC., and

FARMERS INSURANCE GROUP,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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PETITIONER'S SUPPLEMENTAL REPLY BRIEF.

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TABLE OF CONTENTS

PAGE

Respondents Reply Brief.....2,3,
Page 2 under Second I and Page 4-No. 4,5
III

DATE CORRECTION Petitioner's Reply....6
Brief

Correction, Respondent's Brief in ...6
Opposition

PETITIONER'S REPLY BRIEF: 6
(Adding two more names) Showing file
and Record date. (DEPOSITIONS).

RECORD DATES OF FILINGS-PETITIONER'S 6,7
REPLY BRIEF (APPENDIX) 13-A -18-4

ORIGINAL PETITION PAGE 44A "Farmers .. 7
Insurance Group Job Descriptions" File
date US.DIST.CT. & U.S.CT.Appeals

RIGHT TO SUE LETTER.....8

SPECIAL NOTE REGARDING ATTORNEYS IN...8
CLASS ACTION.

EXHIBITS REQUESTED BY MARY TABEROFF FROM
U. S. COURT OF APPEALS FOR THE NINTH
CIRCUIT AND "RESPONDENTS". 8

TABLE OF AUTHORITIES

PAGE

Cases and Materials for a Course.....2
on Legal Methods- Robert N. Covington
et al. 1969, Foundation Press, Page 463,
Ch.6, and Pt. 2 Page 482 (University
Casebook Series).

Federal Rules Civil Procedure.Rule 41(b)
28 U.S.C.A. PAGE 792.....3
No. 41, No. 43, No.47.

No.41 Hildebrand v. Honeywell, Inc.,C.A.
Tex. 1980, 622 F2d 179 3

No.43 Tolbert v. Leighton, C.A.Cal.1980,
623 F2d 585 3

No. 47 Miscellaneous Cases..same as 3
No.43

VERBATIM: Otis C. Tolbert, Plaintiff-
Appellant. v. Elliott Leighton, U.S.C.A.
Ninth Cir. 5/29/80, Page 586,587 4,5

(LIST OF CLASS ACTION ATTORNEYS) 5

PLEASE NOTE OTHER AUTHORITIES UNDER (1)
AND (3) 4,5

No.80-2166

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PETITIONER'S SUPPLEMENTAL REPLY BRIEF.

Material within is pertinent for case of Petitioner recently researched. In addition, date correction and Record dates of APPENDIX Exhibits 13-A to 18A-4 originally filed in PETITIONER'S REPLY BRIEF DATED: AUGUST 4, 1981, and a few others.

rage 2 and(Page 4-No.III)
SECOND: Respondent ("Farmers") under I of their Reply Brief In Opposition regarding Petitioner's trial counsel:

CASES and Materials for a Course on Legal Methods-Robert N. Covington-E.Blythe Stason, John W.Wade-Elliott E Cheatam-Theodore A. Smedley-University Casebook Series:

1969, The Foundation Press: Page 463, Ch.6, Role of the Lawyer- ".....Fundamental fairness to a person accused of a crime requires such judicial guidance of the conduct of a trial that when it becomes apparent appointed counsel are not protecting the accused the trial judge should move in and protect him".

Pt. 2 Page 482-The decision making processes ".....While the Rules of Civil Procedure of The United States District Courts were promulgated pursuant to an enabling Act of Congress, the control over the federal courts bar might be rested on the more fundamental principle of the inherent power of a court to set standards and impose sanctions on those who practice before it. Note that Article III of the Constitution begins,"The judicial power of the United States shall be vested" in indicated courts. The judicial power may well extend over those "officers of the court", the lawyers".

MARY TABEROFF IS NOT A CRIMINAL. She is a female in a Civil Rights Case Title VII.

QUESTION: SHOULD SHE BE DEPRIVED THE SAME RIGHT OF PROTECTION IN A COURT? Federal Rule 8, says,"a just, fair and speedy trial"..."

FEDERAL RULES CIVIL PROCEDURE, Rule 41(b)
28 U.S.C.A. Page 792

41. Failure to prosecute-Generally
"Party should not be punished for his attorney's mistake absent clear record of delay or wilful contempt and finding that lessor sanctions would not suffice." Hildebrand v. Honeywell, Inc., C.A.Tex. 1980, 622 F 2d 179.

43. - Abuse of discretion
" It is an abuse of discretion to dismiss a plaintiff's case for failure to prosecute, where the only evidence of dilatoriness is his or his attorney's failure to attend a pretrial conference, the court has not warned that failure to attend will create risk of dismissal, and the case is still young." Tolbert v. Leighton, C.a.Cal.1980. 623 F 2d 585

47-Miscellaneous cases-
("Court must consider some of the less drastic alternative sanctions before dismissing action"- same case)

Judge W.P. Gray abused his discretion in the individual case of Mary Taberoff. He should have questioned Mary Taberoff just as he questioned the "Defendant's Witnesses " all males and he should have inquired of the attorney on Mary Taberoff taking the stand.

Mary Taberoff should have had the opportunity to rebutt and give all the evidence that was in court, some that was actually on file which to-date has been included in the Supreme Court filings.

VERBATIM FROM: Otis C. Tolbert, Plaintiff-Appellant, v. Elliott LEIGHTON, Defendant-Appellee. No. 78-1038 U.S.Court of Appeals Ninth Circuit. May 29, 1980: Page 586, 587:

[1] *Sua sponte* dismissals for failure to prosecute will be affirmed unless the district court abused its discretion. *Link v. Wabash R.R.*, 370 U.S. 626, 633, 82 S.Ct. 1386, 1390, 8 L.Ed.2d 734 (1962). In *Link*, the Supreme Court upheld such a dismissal for failure to attend a pretrial conference in a case already six years old, where there was evidence that the plaintiff "had been deliberately proceeding in dilatory fashion." *Id.* But the Court made clear that it was not deciding "whether unexplained absence from a pretrial conference would *alone* justify a dismissal with prejudice if the record showed no other evidence of dilatoriness on the part of the plaintiff." *Id.* at 634, 82 S.Ct. at 1391.

The question that *Link* reserved is before us today. Other courts of appeals have held that such an absence, alone, does not justify the drastic sanction of dismissal. *Moreno v. Collins*, 362 F.2d 176 (7th Cir. 1966) (counsel missed status call three months after complaint filed); *Meeker v. Rizley*, 324 F.2d 269 (10th Cir. 1963) (out-of-state plaintiff, pro se, missed pretrial conference three months after complaint filed); *accord, Flaksa v. Little River Marine Construction Co.*, 389 F.2d 885 (5th Cir.) (counsel twice failed to appear at or send prepared substitute to pretrial conferences, and was guilty of other delay, in case less than a year old; dismissal was abuse of discretion), *cert. denied*, 392 U.S. 928, 88 S.Ct. 2287, 20 L.Ed.2d 1387 (1968).

[2] We agree that it is an abuse of discretion to dismiss a plaintiff's case for failure to prosecute where (1) the *only* evidence of dilatoriness is his or his attorney's failure to attend a pretrial conference; (2) the court has not warned that failure to attend will create a risk of dismissal; and (3) the case is still "young."

[3] Especially where one or more of these factors is present, before dismissing a case a district court must consider some of the less drastic alternative sanctions at its disposal. *Anderson v. Air West, Inc.*, 542 F.2d 522, 525–26 (9th Cir. 1976); *Von Poppenheim v. Portland Boxing & Wrestling Comm'n*, 442 F.2d 1047, 1053–54 (9th Cir. 1971), *cert. denied*, 404 U.S. 1039, 92 S.Ct. 715, 30 L.Ed.2d 731 (1972); *see Industrial Building Materials, Inc. v. Interchemical Corp.*, 437 F.2d 1336, 1339 (9th Cir. 1970). There is no indication that the district court here did so; necessarily, then, the court failed to exercise any discretion in choosing among the alternatives.

CLASS ACTION ATTORNEYS: (Taberoff et al, EEOC, P/I, v. Farmers Group et al)

California Law Center, 1434 Westwood Blvd.,

Los Angeles, Calif.

Gail Brod, Attorney , Los Angeles
Max Factor,III, Attorney , Los Angeles
Russell Specter, Attorney , San Francisco
Paul Spiegelman, Attorney , San Francisco
Jerome Garchik,Atty.(Heyhart, Anderson & Freitas, (San Francisco)
Blanche C. Bersch, Atty. Los Angeles
Laura Stevens, Atty. San Francisco
Russell Lombard, Atty. San Francisco
Ronald M. Sinoway, Atty. San Francisco
Representing Legal Division EEOC, San Francisco: Cynthia Gitt, John Rau, Steve Passek et al.

Date Correction Petitioner's Reply Brief, Page 8, No.5: Should read: Dated December 15, 1977

Page 2, APPENDIX: Respondent's Brief In Opposition: No. 2: "through May 1972" is not true. Mary Taberoff was dismissed on May 15, 1972.

PETITIONER'S REPLY BRIEF: PAGE 10: (a), adding names of Mary Baida, and Arthur Ojena: DEPOSITIONS: On file U.S.District Court, Los Angeles, California: Also, requested for filing in "DESIGNATION OF RECORD":

		FILE DATE
Mary Baida, Personnel	Interviewer	3/21/75
Mary Taberoff,	Vol.I, Vol.II, Vol.III	11/20/75
William Bock, Supervisor		6/24/76
Richard Rudy, V.P.& Treasurer Inv.		6/24/76
Albert Milhe, Forms Design &Cont.Mgr.		6/24/76
Alphonso Von Schnabl, V.P. Admn.		6/24/76
Arthur Ojena, Personnel Interviewer		6/24/76
Larry Woo, (Orig.Supr.) Cash Mgr.		7/29/76
George Maslach, Gen. Counsel		12/10/76
Roy Hollyfield, Personnel Dir.		1/11/76

RECORD DATES OF FILINGS: PETITIONER'S REPLY BRIEF: APPENDIX:

	PAGE
Mary Taberoff letter to Hollyfield	..13-A

First appears in Richard Rudy Deposition, date 4/5/76 Exhibit #1, filed: 6/24/76

Robert E. Early letter 14-A
This was filed on several occasions. One on hand is Exhibit X8which was attached to the "Opening Brief of Appellant" U.S.Appeals Court for the Ninth Circuit. FILED: 7/19/79, R'cvd as of 7/9,..(7/7)(DOCKET SHEET).

Dismissal letter(NINE DAYS LATER)....15-A
Filed: Mary Taberoff Deposition, U.S.Dist. Ct.Los Angeles, Exhibit I(Shows up in various filings, U.S. Dist. Ct. and U.S.Appeals Court for the Ninth Circuit).

James A. Magdlen , Credential Letter...16-A

Page 17 Profile on Mary Taberoff, Exhibit X-5, "Opening Brief" U.S.Ct. of Appeals.

Glenda Hendrick Affidavit.....18 A-1,2,3,4
First shows up in "ANSWERS AND OBJECTIONS TO DEFENDANT'S THIRD SET OF INTERROGATORIES, FILED: Jan.6, 1977, U.S.Dist. Ct. Los Angeles, EXHIBIT "A".(Appears many times thereafter.)
IN ORIGINAL PETITION DATED:June 18, 1981, PAGE 44A "FARMERS INSURANCE GROUP JOB DESCRIPTIONS": FILED 3-14-77 by DEFENDENTS, U.S. DISTRICT COURT, LOS ANGELES. I filed U.S. Ct. of Appeals under EXCERPT A-8, 7/19/79, r'cvd7/9(DOCKET SHEET).

RIGHT TO SUE LETTER IN CASE NO.: TLA2 1890
TLA2 1508
TLA0 0780

For Mary Taberoff was dated:
April 22, 1974 and was filed with the first Civil No.74-1108-WPG, April 1974.

SPECIAL NOTE: Before the settlement of the CLASS ACTION, and directly after, several of the attorneys left the case. Paul Spiegelman became a Law Professor, Gerome Garchik became attorney for large Union in San Francisco, Gail Brod and Max Factor III left fairly early after filing because the "Center" ran out of funds.

Today is August 26, 1981. I have not received any of the exhibits that I have requested from Respondent's Attorney. I have been in touch with the U. S. Court of Appeals for the Ninth Circuit and am informed that "Before the week is over" the panel will let the Clerk know the details of sending Mary Taberoff the exhibits she requested, however, I believe it is important to send this Supplemental Reply Brief as quickly as possible.

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Tel.:(512)932-3129

DATE: August 27, 1981

Mary Taberoff

MARY TABEROFF, PRO SE

CERTIFICATE OF SERVICE

I, Mary Taberoff, Pro Se, under the penalty of perjury, hereby testify that this " PETITIONER'S SUPPLEMENTAL REPLY BRIEF" is true and correct to the best of my knowledge. On August 27, 1981, I put respective copies in envelopes, sealed them and mailed from the Lampasas Post Office, Lampasas, Texas, FIRST CLASS MAIL.

40 copies to: U.S.Supreme Court, Wash.D.C.

Three copies to: Jack H. Halgren, Atty.
Gibson, Dunn & Crutcher of Counsel
2029 Century Park East
Los Angeles, Calif. 90067

Three copies to: Soliciter General
Department of Justice
RM 5614 Washington, D.C.

Three copies to; Colleen O'Connor, App/Atty.
EEOC
2401 E. St. N.W.
Rm.2294 Wash. D.C. 20506

DATE: AUG. 27, 1981

Mary Taberoff

Mary Taberoff, Pro Se

SWORN TO AND SUBSCRIBED BY Mary Taberoff, a credible person, before me, on this 27th day of August A.D. 1981.

Frances Porter

Notary Public in and for the
County of Lampasas, Texas

Commission expires 4-85